

TOWN OF TRURO
BOARD OF SELECTMEN
MEETING OF TUESDAY, SEPTEMBER 4, 2007

The Truro Board of Selectmen met for their weekly session on Tuesday, September 4, 2007 at 6:00 p.m. at the Truro Town Hall, 24 Town Hall Road, Truro. In attendance were: Chairman Alfred Gaechter, Vice-Chairman Gary Palmer, Clerk Christopher R. Lucy, Curtis Hartman, Jan Worthington, Town Administrator Pamela Nolan, Administrative Secretary Julie DuPree, Assistant Town Administrator Charleen Greenhalgh, Yvette Drury Dubinsky, Sharon Basco Koch, Judyth Katz, Daniel Katz, Andrea Kline, Chet Lay, Duane Landreth, Don Kline, Elizabeth Kenny, Justin Kaplan, Anne Bernays, Bruce Boleyn, Sam Boleyn, Caroline Herron, John Marksbury, Chuck Steinman, Michael and Frank Bellefeuille, Girard Smith, Mark Schiffenhaus, Bob Weinstein, Paul Shafnacker, William Burney, Nathan Church, Kevin Bardwell, Larry E. Lown, John Thornley, Marie Broudy, Patti Tetrault, Nancy Thornley, Peggy Frank Mary Genevieve Schiffenhaus, Merlin Jones, Austin Schiffenhaus, Harriet S. Bee, Nancy Callander, Robert F. Lowe, Jr. Joseph Lewis, Carol Green, Laurence S. Phillips, Kenni W. Burney, Rene G. Lamadrid, Nathalie Ferrier, Judith Shahn, Ilse Sakheim, George A. Sakheim, Wendy Levine, Ellyn Weiss, Marian Averbach, Barbara Sass, Martha Nagy, S. Schiffenhaus, Jackie Boyd, Katie Zezima, Alice Furlaud, Susan Kadar, Regan McCarthy, Brian Morris, Brenda Boleyn, Frances M. Melnicaak, Elizabeth Adler, Paul Kiernan, Fred Schilpp, Dave Roberts, David Howell, D. McCutchen, Buddy Perkel, Dennis Klass, Steve Desroche of the Cape Codder, Robin Lord of Cape Cod Times and Kevin Mullaney of the Banner.

Mr. Gaechter convened the meeting at 6:00 p.m.

Minutes: Mr. Palmer moved to approve the minutes of August 21, 2007 as written and to hold the executive session minutes. Ms. Worthington seconded it. Mr. Hartman made a correction, and the minutes were then accepted. Vote: 5-0, unanimous.

Public Comment: None

Discussion on referral of 25 Stephen's Way to CCC: Mr. Gaechter explained that this was a continuation of the discussion at their last meeting, and outlined the procedure that would be followed. Town Counsel spoke first, giving the Board an overview of the standards and criteria the BOS had to follow regarding a discretionary referral of a Development of Regional Impact (DRI) to the CCC. This case would not be a mandatory referral, and in going through the sections of the Enabling Regulations Governing Review of DRI, it is his opinion that the BOS does not have the authority to refer this as a DRI. They could request that the CCC consider it, as could members of the public, but such a request would not be a binding requirement on the CCC. He spoke to the CCC and they agree that this is the case. Mr. Hartman asked if he was suggesting that it would have the same political weight if it was requested by citizens and not by the BOS. Mr. Veara said his purpose is to advise the Board on legalities. He cautioned the Board that they must act within the confines of the law, and not for political purposes. Mr. Gaechter said he also spoke with the CCC and they verified everything Town Counsel has said, and they also indicated that they would accept it if the BOS requested it.

Ms. Kadar told the Board that they have already received an overload of information on this. She listed the numerous media outlets that have reported on this, the organizations that have

expressed their concern with this, as well as the 300 plus signatures on the petition. There are two aspects to the worries: environmental and historical. The CCC has the authority to act on anything that requires an ENF. She asked that the BOS invite the CCC to oversee the needed protective measures, which can be done by a simple letter from the BOS requesting this action. The CCC Regional Policy Plan speaks to protection of rare species, historic perspective, community character and all the issues involved in this case. They have staff with professional knowledge and the Commission has the authority to impose regulatory decisions.

Attorney Landreth said that he questioned why the local member of the CCC would be petitioning the BOS to take action on something the CCC could do itself. The applicant had to file an ENF with the State and that is when this became an issue of public interest. Mr. Kline has already made significant contribution to the so called Hopper Landscape. He questioned what the CCC was going to do. He requested that the BOS make detailed findings as to what it makes its determination on. State agencies have already taken a detailed look at this; it is in competent hands. He noted that the under historic resources, the CCC ties them to specific structures, not a place. Engineer Chet Lay used pictures and maps to clarify his points. He told the Board that the Klines have agreed to a conservation restriction on four acres of their property; this includes their entire waterfront. He noted that the proposed dwelling is already situated as far east as it can be because of the steep grade. The Hopper property was divided into three parcels. Other portions have been built on and subdivided and nothing has been said. He sees this as a private rights issue. He noted that another house is already in the view, and that house was built without any concern for blending into the property, while the Kline house is one-story, designed to blend into the property. Mr. Kline told the Board there has been a lot of misinformation and disinformation. He gave the Board an overview of his experiences in Truro and Provincetown. They have designed a one-story building, as unobtrusive as possible and still maintaining the view, particularly from the bay. He never expected this reaction. He said the design and placement follow the LCP for scenic landscapes. He read aloud from that portion, noting that it called for protection of the Hopper Landscape "as seen from the beach". He said it is a simple question of fairness. He was aware that single family dwellings have not been regulated by the CCC. He noted that his MESA review is just underway. He asked the BOS to 1, vote consistent to the CCC act regarding single family dwellings, and 2, vote consistent with the LCP.

The public was invited to comment. Mr. Steinman informed the Board that he had received a letter from MA Historic Commission in which they said it is MHC staff's opinion that the Edward Hopper House and its surrounding landscape are eligible for listing in the National Register of Historic Places as a potential National Register historic district. Mr. Lucy questioned the timing of the Truro Historic Commission request to MHC and the process. Town Counsel told Mr. Steinman that a letter that opines that it may be eligible does not change his opinion. Mr. Gaechter added that the CCC also said this letter did not change anything.

Mr. Schiftenhaus told the Board about their family's history with the Hopper House and how they have tried to maintain it in honor of the Hoppers. Mr. Weinstein urged the town to look at planning tools to protect the whole town rather than pick out a single family residence. Ms. McCarthy questioned Mr. Kline about the future development of the Kline property. Attny.

Landreth said her question was out of order. Ms. Holt expressed her belief that the CCC is our professional consultant, trained planners paid by taxpayers. Local boards are not professionals; she recommended that the BOS act in the interest of the public and bring this before professionals at the CCC.

Mr. Kline told Ms. McCarthy that he had no intention of subdividing the property, other than possibly in the future for estate planning purposes.

Mr. Gaechter suggested the motion, which had been reviewed by Town Counsel and the CCC and was legal, **“to send the following communication to the CCC: the Town of Truro, by and through its Selectmen, requests that the CCC consider a review of the proposed development by Donald and Andrea Kline for property at 25 Stephens Way as a DRI, in accordance with Barnstable County Ordinance 90-12 Section 2 (d) (ii) and/or other relevant Sections”**. He said that his proposed motion does not take a position, but just asks the CCC to take a look. It is not a political issue for the BOS, but a technical and analytical issue. The CCC will be another set of eyes. No matter what side you are on, you should not be afraid of this review. He urged the town to create bylaws that prevent doing this on a case by case basis. **Mr. Gaechter read the motion again. Mr. Palmer seconded it.** Ms. Worthington said she would vote for this, but agrees with the comments on fairness and hopes that all building will undergo the same scrutiny. There are many other views in Truro that mean as much to her and should be preserved. Mr. Palmer said he intends to vote for it, but hopes not to be faced with a similar situation in the future. Mr. Lucy said he has seen the proposed location and noted that the house will be 70' behind the Hopper House, and how little was going to be disturbed that would be seen from the Hopper window. He noted that the property has been available for years, and no one has done anything to protect it before this. He was concerned that our representative to the CCC is leading the group that is requesting this be sent to the CCC. He understands that now she cannot sit on it, and people from Yarmouth and other towns at that end of the Cape will be, and they won't understand it as she would. He said there was no question it would be accepted by the CCC. He views the Historical Commission's submission to the State as unfair. This is not the biggest, and not the most intrusive house in town. He is going to vote against this; we have bylaws and State Building Codes to protect us. He feels our bylaws are adequate, but if others feel they need to be changed, they should do so at Town Meeting. Mr. Gaechter said the onus is on everyone in the room to support changes to the bylaws; they can't sit and point fingers if they don't vote. **Vote: 4-1, with Mr. Lucy opposing.**

Truro Treasures Dump Dance: Mr. Gaechter moved to approve the annual Dump Dance. Mr. Palmer seconded it. Vote: 4-0, unanimous. (Ms. Worthington had left the room.)

MMA essay contest: The MMA invites towns to participate in the second annual MMA Statewide Essay Contest for 6th Graders. **Mr. Hartman moved to commit the Town of Truro to encourage its 6th graders to participate in this essay contest. Mr. Lucy seconded it. Vote: 4-0, unanimous.**

Cable Negotiations with Comcast: Ms. Nolan explained that the consortium of towns

negotiating with Comcast, of which Truro is a member, has chosen William Solomon to represent us. The Selectmen need to commit the money for this. Mr. Hartman explained that we have some leverage now because Comcast wants to get rid of its studio in Orleans, so we have a chance to look at non-compliance. This is our best chance to push a monopoly an inch or two. Mr. Klass said that Mr. Solomon has been vetted, and has a good track record. It is our responsibility to work out payment with the six other towns. He feels it will be pro-rated, since we have the fewest subscribers. Mr. Gaechter said he would like to see it pro-rated, but doing it ourselves would cost more than this in any case. **Mr. Gaechter moved to authorize payment of legal fees for joint negotiations with the question whether they will be equal payments or pro-rated. Mr. Hartman seconded it. Vote: 5-0, unanimous.**

Truro Vineyards desire to purchase State property: Ms. Greenhalgh gave the Board an overview of the previous owner's attempt to purchase the state-owned strip of land bordering their property. The Board discussed with Mr. Roberts his plan to enlarge parking along South Hollow Road, leaving a buffer; he wants the land along Route Six to give him room to maneuver tractors and perhaps put up additional white fencing. He doesn't intend to bring the grapes further down. He wants to increase the acreage to the State's level for agricultural use. **Mr. Palmer moved that the town does not object to Mr. Robert's attempts to purchase the State property that abuts his property.** Mr. Hartman asked that the motion state that the BOS supports it instead of doesn't object. **Mr. Palmer moved that the BOS supports Mr. Robert's attempt to purchase the State property that abuts his property. Mr. Hartman seconded it.** Mr. Lucy questioned if it would create a build-able lot if the purchased property was added to one of the existing three parcels. Mr. Gaechter said they could make it more difficult by saying it has to be added as lot 4. **Vote: 5-0, unanimous.**

Town Administrator's Report: (no action items)

Selectmen/Liaison Reports: (action items)

Hartman: -Received two complaints about parking at the ponds. There were too many cars. He asked that Ms. Nolan find out whose responsibility it is to monitor the parking.

Gaechter: -Reported that he spoke to the USPS and they are meeting with the property owners on Highland Ave. on September 13th. Ms. Greenhalgh informed him that she will be meeting with a traffic expert from the CCC on Friday. They will be doing various site visits. -Sought guidance from his colleagues on how to proceed regarding a person who wants to come before the BOS to refute everything Ms. Johnson said to the Board regarding dune shacks. He feels a letter could be sent to the BOS, but it should not be an agenda item. Mr. Hartman noted that anyone could come in under public comment, or write a letter.

Worthington: -Asked what was happening to the Community Center parking. Ms. Nolan told her they started work on it again today. The change order is not to go over the \$7k mark.

Next week's agenda: Cable Advisory Committee, NPS letter re: dune shacks, Rice curb cut, Recreation Commission

Other business: None.

At 8:24 p.m. Mr. Gaechter moved to convene in Executive Session under the provisions of MGL Chapter 39, Section 23B to consider employee issues and to not reconvene in Open Session. Roll Call Vote: Hartman, aye; Palmer, aye; Gaechter, aye; Lucy, aye; Worthington, aye. 5-0, unanimous.

Alfred Gaechter, Chairman

Gary Palmer, Vice-Chairman

Christopher R. Lucy, Clerk

Curtis Hartman

Janet W. Worthington

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Town of Truro